

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA

v.

Criminal No. 2:16-cr-00049

MARK ANTHONY LEVITT

MOTION FOR DISCOVERY

Defendant Mark Anthony Levitt, by his counsel, moves this Court for an Order directing the Government to produce copies of all of the following materials relating to an anticipated claim for restitution. In support of this Motion, Mr. Levitt states as follows:

1. On July 8, 2016, Mr. Levitt pled guilty to enticement of a minor in violation of 18 U.S.C. § 2422(b). Doc. Nos. 52; 53. For purposes of protecting the minor's privacy, the parties refer to her as L.B. *See* Doc. No. 32.

2. No one has filed a claim for restitution in this case. However, on August 30, the United States filed its Fourth Supplemental Response to the Defendant's Standard Discovery Requests. Doc. No. 54. The disclosures appear to anticipate that a claim for restitution on behalf of L.B. is forthcoming because they contain, among other things: a billing report for patient L.B. from Harmony Mental Health Services "(Harmony)"; an opinion letter from Harmony's Clinical Director estimating needed therapy for L.B.; correspondence between the Clinical Director and a

representative of the United States Attorney's Office; an order of judgment in the West Virginia Court of Claims that appears to relate to Harmony counseling expenses for L.B.¹

3. In order to allow Mr. Levitt a fair opportunity to litigate the anticipated restitution claim at his upcoming October 5, 2016 sentencing hearing, Mr. Levitt requests that this Court order the government to disclose and produce the following materials:

- a. All documents provided to or otherwise relied upon by Harmony's Clinical Director in the course of evaluating L.B. and/or forming her opinion, any notes which were made during the course of her evaluation of L.B., and the raw test results from any psychological test which was conducted during any evaluation of L.B. relied upon by the Clinical Director.
- b. The name(s) and CVs of any expert witness that the government intends to call at the sentencing hearing concerning any restitution claim submitted on behalf of L.B., including any report(s) prepared by such expert (or a written summary of his or her opinion if no such report has been prepared).
- c. All documents provided to or otherwise relied upon by any proffered expert witness which the government intends to call at the sentencing hearing concerning any restitution claim submitted by L.B.
- d. Any other bills which document psychological treatments or counseling that L.B. has received since June 2015.
- e. A copy of all school records, including transcripts for grades for L.B.
- f. A list of any restitution awards which have been entered in favor of L.B., including any awards arising from restitution sought or obtained in connection with the prosecution of individuals charged with taking pictures of or sexually abusing L.B.
- g. All filings or other submissions to the court in the West Virginia Court of Claims relating to the judgment described above.²

¹ Counsel is excluding the case name to ensure the privacy of L.B.

² Counsel requested records relating to this judgment from the Court of Claims. On September 13, an attorney for that court agreed to provide some records in redacted form but not others. Specifically, he stated that the court would not disclose "medical records or medical bills – other than total medical costs – from its files without a release from the patient or a court order to produce the specific records."

For the reasons set forth herein, Mr. Levitt requests that this motion be granted and the requested materials be disclosed to counsel by September 23, 2016.

Respectfully submitted this 13th day of September, 2016.

MARK ANTHONY LEVITT

By Counsel

**CHRISTIAN M. CAPECE
FEDERAL PUBLIC DEFENDER**

s/ Ann Mason Rigby

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **Motion for Discovery** has been electronically filed with the Clerk of Court this date using the CM/ECF system and served upon opposing counsel as follows:

VIA CM/ECF: Lisa G. Johnston
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DATE: September 13, 2016

s/ Ann Mason Rigby
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